



Federal Communications Commission
Washington, D.C. 20554

March 29, 2004

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Federal Communications Commission
Office of the Secretary

Stephen T. Devine, Chairman
Region 24 700 MHz Regional Planning Committee
Missouri State Highway Patrol
Communications Division
P.O. Box 568
Jefferson City, Missouri 65102

Re: 700 MHz Regional Planning – Region 24 700 MHz Regional Plan
WT 02-378

Dear Chairman Devine:

This letter responds to your request for review of the 700 MHz Regional Plan (Plan) and associated request for waiver that you filed on behalf of Region 24 Missouri (Missouri).¹ We have reviewed the Plan and the request for waiver and have identified two elements that are deficient. Accordingly, we deny the waiver request and dismiss the instant request for review without prejudice. As a result of our action, we suggest that Region 24 submit a revised Plan that resolves the deficiencies that we discuss herein.

By way of background, the Commission's role in relation to the regional planning committees (RPCs) is limited to: (1) defining the regional boundaries; (2) requiring fair and open procedures, *i.e.*, requiring notice, opportunity for comment, and reasonable consideration; (3) specifying the elements that all regional plans must include; and (4) reviewing and accepting proposed plans (or amendments to approved plans) or rejecting them with an explanation.²

On September 16, 2003, Missouri submitted a request for Commission review and approval of its proposed Plan. In addition, you requested a waiver of Section 90.527(a)(5) of the Commission's Rules³ to permit the filing of the Plan without coordination from all adjacent regions. In your waiver request,

¹ Letter from Stephen T. Devine, Chairman, Region 24 700 MHz RPC, to Federal Communications Commission, Wireless Telecommunications Bureau, Chief, Public Safety and Private Wireless Division, filed Sept. 16, 2003 (Request) and Waiver Attachment (Waiver Requests) (submitting the Region 24 700 MHz Regional Plan on behalf of the Region 24 700 MHz Regional Planning Committee (Region 24 RPC). The Plan was electronically filed with the Office of the Secretary in WT Docket No. 02-378, on September 16, 2003.

² See The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010, *First Report and Order and Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, 14 FCC Rcd 152, 195 ¶ 87 (1998) (*First Report and Order*)

³ See 47 C.F.R. § 90.527(a)(5). Regional plans must include an explanation of how the plan had been coordinated with adjacent regions.

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15, Iowa; Region 16, Kansas; Region 17, Kentucky; Region 26, Nebraska; Region 34, Oklahoma, and Region 39, Tennessee, and (b) that you were unable to obtain Letters of Concurrence from Region 4 Arkansas and Region 34 Oklahoma because [at the time of your Plan submission] both regions had not convened their first meeting and were therefore “unformed regions.”⁴ In addition, you state that the 700 MHz band is clear of incumbent broadcast stations . . . and public safety 700 MHz spectrum is immediately available throughout Missouri.⁵

Waiver Request - Evidence of successful coordination with adjacent regions. Requests for review and approval of 700 MHz regional plans or modifications thereto must include “evidence of how the plan had been *successfully* coordinated with adjacent regions.”⁶ We acknowledge that of the fifty-five regions, several remain unformed at this time. We continue to monitor the progress of all regions, and where regions fail to form, we will take the appropriate measures. The specific merits of the instant requests for waiver are addressed below:

Region 34 - Oklahoma. In support of the Waiver Request, you state that (a) [Missouri] made every reasonable effort to contact and obtain the consent of all adjacent Regions; (b) Region 34 selected a convener but had not yet established a date for its initial meeting, so a copy of the Plan was provided to the convener in April 2003; (c) the area bordering Missouri and Oklahoma is rural with sparse population and national channel sorts and channels allotted along the [Oklahoma]/Missouri border are sufficient for both states to utilize without any concern for lack of channels; (d) the wideband allotment provides ample available wideband spectrum, in the form of 50, 100 or 150 kHz channels to counties in Region 34 that border Missouri; and (e) by following these planning procedures Missouri believes that Region 34 will have sufficient spectrum to meet its needs along the border when it commences 700 MHz regional planning.⁷

Region 4 - Arkansas. The Waiver Request for Region 4 presents a nearly identical argument to the Region 34 request, noting that the area bordering Missouri and Region 4 is rural with sparse population, except for the bordering area around Branson, Taney County, Missouri.⁸

While Region 24’s actions appear reasonable and taken in good faith, we nonetheless conclude that, absent evidence of how the Plan was successfully coordinated with adjacent regions, the Plan must be rejected. The Commission expressly clarified this requirement for 700 MHz regional planning.⁹

⁴ Waiver Requests at 1

⁵ Request at 1

⁶ See *First Report and Order*, 14 FCC Rcd at 194 ¶ 84; 47 C.F.R. § 90.527(a)(5).

⁷ Oklahoma Waiver Request at 1. In addition, to support the Missouri’s “Unformed Region” exemption, the Plan states that (a) it utilized a pre-allocation approach by developing county pools allotments counties; (b) that other geographic subdivisions within 70 miles of the Regional border need to share spectrum with the adjacent Regions, and that (c) a 25 kHz building block will be used to distribute spectrum between the Regions. See Plan, Section 4 - *Process for Handling Unformed Regions* at 13. Although this appears to be a good planning practice, it does not exempt regional planning committees from obtaining concurrence from adjacent regions.

⁸ Arkansas Waiver Request at 1

⁹ The Commission clarified this requirement based on “lessons learned” from over ten years of 800 MHz regional planning. See, e.g., *First Report and Order*, 14 FCC Rcd at 193-94 ¶¶ 83-84.

Previously, we rejected the Region 5 Plan for failing to include letters of concurrence from all adjacent regions.¹⁰ However, we note in this connection that our records reflect that Region 34-Oklahoma¹¹ became active subsequent to the filing of the Plan, and that Region 4-Arkansas has appointed a convener and has announced that its first meeting was scheduled for February 24, 2004.¹² At this juncture and in light of these developments, we view the instant requests for waiver of this requirement to be premature, particularly given that we have additional concerns regarding the Plan.

The Commission will grant a waiver if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) in view of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ Based on the record before us, we conclude that the facts and circumstances presented are not unique or unusual. Furthermore, Missouri has not presented specific applicant or agency information establishing an immediate need and readiness to develop or to incorporate the 700 MHz channels in an established or future communications system. Moreover, Missouri has not demonstrated that a reasonable delay in the obtaining Commission approval of its Plan would be unduly burdensome, or that has no reasonable alternative. Accordingly, the requests for waiver are denied.

Plan Review Although we have denied the waiver requests, we nonetheless reviewed the Plan preliminarily to determine if there any readily identifiable deficiencies. Based upon our review, we find that the following elements must be revised or otherwise supplemented before the Plan would be ready for further processing.

Adequate notice and opportunity for all eligible entities, meeting minute summary information.

The Commission expects RPCs to ensure that their committees are representative of all public safety entities in their regions by providing (1) reasonable notice of all meetings and deliberations, (2) opportunity for comment by all interested parties, and (3) reasonable consideration of the views expressed.¹⁴ In this connection, plans must include an explanation of how all eligible entities within the region were given notice, an opportunity to participate in the planning process and to comment, and have those comments reasonably considered.¹⁵ Generally, a plan should include copies of meeting notices and describe the publications in which the meeting notices were placed, as well as the publication dates.¹⁶ We also believe that the plan should include any other information necessary to establish that these efforts

¹⁰ See Letter dated Dec 30, 2002 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau to David Buchanan, Chairman.

¹¹ Region 34 held its first meeting on November 19, 2003, and elected Gene Thaxton as its Chairman. See Region 34 (Oklahoma) 700 MHz Regional Planning Committee Announces First Meeting, *Public Notice*, 18 FCC Rcd 18788 (WTB PSCID 2003).

¹² See Region 4 (Arkansas) 700 MHz Regional Planning Committee Announces First Meeting, *Public Notice*, 18 FCC Rcd 26633 (WTB PSCID 2003).

¹³ See 47 C.F.R. § 1.925(b)(3)

¹⁴ *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84. RPCs must promptly adopt operating procedures that "ensure that all entities will be given reasonable notice of all committee meetings and deliberations." *Id.* at 195 ¶ 86

¹⁵ *Id.* at 193 ¶ 84

¹⁶ *Id.*

reasonably gave all eligible entities notice of each meeting, particularly if there was minimal attendance at such meetings

Here, for example, the Plan states that announcements were sent and posted in industry periodicals, *i.e.*, MRT Magazine, Radio Resource, and the Association of Public Safety Communications Officials, Inc. (APCO) magazine, and that meeting information was also posted on the Missouri Uniform Law Enforcement System (MULES) teletype network.¹⁷ You also state that e-mail was used to disseminate information, and was sent to “several agencies.”¹⁸ In addition, you state that “copies of the announcements . . . relating to Region 24’s meeting, the ads placed in the industry periodicals, the Missouri SHP press release, and emails are included in Appendix D.”¹⁹ However, no such materials were included in the Plan submission. Based on the information supplied, we are unable to determine whether this notification method is reasonably calculated to provide actual notice to all eligible entities within the region.

Participation The Commission outlined examples of the steps to be undertaken to encourage and accommodate all eligible entities to participate in the planning process. These include a description of steps taken to hold meetings in various parts of the region, copies of meeting notices and publications in which the notices were placed, and whether all submissions/materials were available to each member.²⁰ It appears Missouri has made a reasonable effort to hold meetings in various parts of the region.

However, with regard to participation, we have observed that of Missouri’s 114 counties (with two large metropolitan areas making up part or all of 35 counties), only four counties, Cooper, Greene, Jasper and St. Charles, are represented in Committee membership.

Furthermore, we note, that the Jasper County representative is no longer a resident of Missouri.²¹ Given the apparent extremely limited representation during the Committee’s formation, development of spectrum management operational procedures, and plan adoption, we caution Region 24 to take the necessary steps to ensure that all eligible entities are given the opportunity to participate in future Committee meetings and spectrum allocation deliberations, and to document such steps.

Membership List. Regional Plans must include the names, business addresses, business telephone numbers, and organizational affiliations of the chairman and all the members of the planning committee.²² A membership list containing the foregoing information needs to be included in your next submission.

Frequency “Giveback” Procedure. RPCs are required to provide a detailed description of the future planning process. In this regard, the Plan’s Section 3.1 Procedure for Requesting Spectrum Allocation includes a discussion of the Missouri’s “give-back channel” procedure wherein applicants are

¹⁷ Plan at 3 § 2.1 Notification Process.

¹⁸ Plan at 2 § 4.

¹⁹ Appendix D - List of meetings, summaries of minutes and agenda where 700 MHz information was disseminated. This is a chronological list of meetings and other outreach events

²⁰ *First Report and Order*, 14 FCC Rcd at 193 ¶ 84

²¹ Plan at 4.

²² See 47 C.F.R. § 90.527(a)(1)

expected to relinquish an amount of currently used spectrum (referred to as "give-back channels") and make that spectrum again available for use within the region.²³ Under the Plan, the currently used spectrum may be in any public safety band (except 800 MHz band systems).

The details of this procedure describe a process by which an agency would move its current frequencies from its original call sign, and create a new call sign, attached to a newly created FCC Registration Number (FRN). In addition, the Plan states that as part of the give-back agreement between an applicant and the Committee, the applicant would be required to provide the FRN and password associated with the give-back frequencies to the Committee to use to cancel the new call sign on the agreed upon date when the 700 MHz allotments are implemented. The Plan states that this procedure "... will enable other agencies ... to implement, benefit from and license the applicant's legacy radio channels." The Plan also states that "Region 24 may utilize any mechanism needed to retain 'give back' frequencies within Region 24 to allow for maximum spectral usage by the public safety community."²⁴

As we understand this procedure described in your Plan, we believe that it is most properly characterized as a vehicle to exercise control over public safety spectrum outside of the 700 MHz public safety band, a matter over which 700 MHz RPCs do not have jurisdiction. Consequently, we find the substance of this proposed procedure to be beyond the scope of authority that the Commission vested in the 700 MHz RPCs. As a result, we can not allow this procedure as currently constituted. Thus, Region 24 should either modify or remove this procedure from the Plan.

Finally, we note that certain areas in your Plan appear to require administrative attention:

- Include a Table of Contents and number all pages consecutively for ease of public reference.
- Renumber the sections to read consecutively. See pages 12-13, Section 4 This section is repeated twice, and labeled once as "Priority Matrix" and again as "Process for Handling Unformed Regions."
- Section 9.0 Certification states that a summary of the deliberations of the Committee... adopting this Plan can be found at Appendix E, in the minutes of the January 14, 2003 Regional Planning meeting. Your reference to Appendix E is the 700 MHz Interoperability Channel Nomenclature. Correct the reference to read "Appendix D."

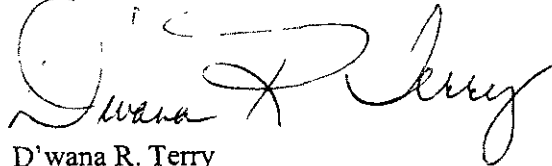
Please note that it is our belief that the foregoing corrections, modifications and supplements will require Missouri to redistribute a revised Plan to all adjacent regions and obtain new concurrences from each of the eight regions prior to submission of a revised Plan.

²³ Plan at 5-6.

²⁴ Plan at 6.

Should you have any questions concerning this matter, please contact Ms. Jeannie Benfaida at 202-418-2313, email jeannie.benfaida@fcc.gov. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read "D'wana R. Terry". The signature is fluid and cursive, with the first name "D'wana" being more prominent than the last name "Terry".

D'wana R. Terry
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

cc See Distribution List

Distribution List

Region 4 – Arkansas

Region 13 – Illinois

Region 15 – Iowa

Region 16 – Kansas

Region 17 – Kentucky

Region 26 – Nebraska

Region 34 – Oklahoma

Region 39 – Tennessee